

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

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CRAIG DAVIS, as parent and
natural guardian of
ANDREW DAVIS,
Plaintiff,

vs.

CATAMOUNT DEVELOPMENT CORP.,
CATAMOUNT DEVELOPMENT CORP.
d/b/a CATAMOUNT SKI AREA,
Defendants.

* * * * *

CIVIL ACTION
No. 05-30011-MAP

**DEFENDANT'S LIMITED OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF ACCIDENT REPORTS**

Introduction

The defendant has agreed to produce accident reports that involve injuries related to collisions with immovable objects such as fences, poles, and lift towers for the 56 days prior to the plaintiff's accident, subject to redacting identifying personal information of the patrons involved.

The plaintiff has agreed that defendant will not produce accident reports involving collisions with ice, snow, and/or bumps, or involving injuries stemming from ski lift falls, and/or parking lot slip and falls.

The defendant agrees to produce the accident reports as discussed above if the identifying information of the involved patron or patrons (such as name and address information) is redacted. The defendant opposes the plaintiff's motion to the extent that the plaintiff seeks to obtain the reports without redacting identifying patron information contained in the reports.

Argument

The incident reports sought by the plaintiff contain sensitive information regarding Catamount's patrons, including

health, medical and other information. M.G.L. c. 214, §1B states that "[a] person shall have a right against unreasonable, substantial or serious interference with his privacy." Furthermore, the Massachusetts Supreme Judicial Court has recognized that a patient has a "valid interest in preserving the confidentiality of medical facts communicated to a physician or discovered by a physician through examination." *Alberts v. Devine*, 395 Mass. 59, 65, cert. denied, 474 U.S. 1013 (1985). The medical facts communicated by Catamount's patrons to its first aid staff are no different.

Given the interest in privacy and confidentiality, discovery in civil cases should be restricted to protect the rights of individuals who are not parties to the action. See e.g. *Cardone v. Boston Regional Medical Center, Inc.*, 60 Mass. App. Ct. 179, 191-192 (2003) (plaintiff sought to obtain patient records, and judge denied motion to compel except for aged accounts; "the Superior Court judge's limitations on discovery are consistent with concern for the patients rights of privacy.")¹; *Stahl v. Rhee*, 136 A.D.2d 539, 523 N.Y.S.2d 159 (1988) (in product liability action, defendant drug company was permitted to redact the names of patients in its reports on adverse reactions to drugs); *Prouty v. National Railroad Passenger Corporation*, 99 F.R.D. 545, 549 (D.D.C. 1983) (in age discrimination case, court sustained objection to producing names of defendant's employees, concluding that the individuals' privacy rights outweighed the plaintiff's interest in discovery). Disclosure of patron information in the incident reports would improperly invade the privacy of Catamount's patrons, and it is appropriate for Catamount to redact that information from the reports.

Conclusion

For the reasons stated above, the defendant respectfully requests that the plaintiff's motion be denied to the extent that it seeks the disclosure of non-redacted accident reports.

¹The plaintiff was a physician who was seeking to recover damages pursuant to an agreement to provide medical and management services at a fertility center.

Defendant,
Catamount Development Corp.,
By its attorneys,

/s/ William L. Keville, Jr.

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